?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 06.03.2019
*CORAM
THE HON-BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON-RABLE MR.JUSTICE B.PUGALENDHI
+CRL.A(MD).No.90 of 2017
#Palanisamy
: Appellant/Accused No.1

Vs.

$State represented by
Inspector of Police,
Thogamalai Police Station,
Karur District.
(Crime No.382 of 2015) : Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment dated 30.12.2016 made in S.C.No.59 of 2016 on the file of the Sessions Judge (Mahila Fast Track Court), Karur.

!For Appellant : Mr.T.Senthil Kumar
^For Respondent : Mr.P.Mohan
Additional Public Prosecutor

:JUDGMENT

The appellant is the first accused in S.C.No.59 of 2016 on the file of the Sessions Judge (Mahila Fast Track Court), Karur. He stood charged for the offences punishable under Sections 302 and 324 of the Indian Penal Code. The Trial Court framed as many as two charges, as detailed below.
Accused
Penal Provisions
A~1
302 & 324 IPC
By Judgment dated 30.12.2016, the Trial Court has convicted the appellant/accused and sentenced him, as detailed below:~
Accused
Section of Law
Sentence of imprisonment
Fine amount
A~1
302 IPC
To undergo imprisonment for life.
Rs.1,000/~ in default to undergo simple imprisonment for one month.
A~1
324 IPC
To undergo simple imprisonment for one month.
Rs.1,000/~, in default to undergo simple imprisonment for one month.

Challenging the said conviction and sentence, the appellant has filed this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:~

The accused party and the deceased party are close relatives and they have been having disputes with regard to drawing of electricity line for quite some tome prior to the incident. It is alleged that on 12.09.2015 around 8.00 p.m., when the deceased Murugan was standing near his house, Palanisamy (A~1), Thamaraiselvi (A~2) and Subramanian (A~3), came there and picked up a quarrel with him and A~1 assaulted him with a crowbar. When Natarajan (P.W.1) and Vadivel (P.W.2), the sons of the deceased Murugan intervened, A~2 is said to have sprinkled chilli power on the face of P.W.1 and A~3 is said to have pelted a stone at P.W.2. It is further alleged that after assaulting the deceased Murugan, A~1 assaulted P.W.2 with crowbar resulting in injuries to P.W.2. When Amsavalli (P.W.6), the cousin of P.Ws.1 and 2 intervened, it is alleged that she was also assaulted by P.Ws.1 and 2. Thereafter, A~1 to A~3 fled. The injured were rushed to the Government Hospital, Manapparai, where they were examined by Dr.William Androse (P.W.13). The Accident Register copies for the witnesses and the deceased are as under:~

(i).Ex.P.9 ~ A.R. Copy of P.W.1
(ii).Ex.P.10 ~ A.R. Copy of P.W.6
(iii).Ex.P11 ~A.R. Copy of the deceased
(iv).Ex.P12 ~ A.R.Copy of P.W.2.

3.P.Ws.1, 2 and 6 were treated as out patient, since the injuries sustained by them were simple in nature. However, Dr.William Androse (P.W.13) referred the deceased to the Government Hospital, Trichirappalli for further treatment as he had sustained head injury. It may be relevant to state that the deceased Murugan was conscious when he was examined by Dr.William Androse (P.W.13). Accordingly, the deceased Murugan was admitted to the Government Hospital, Trichirappalli, but however, he succumbed to the injuries on 13.09.2015 at 2.30 a.m.

4.On the written complaint (Ex.P~1) given by P.W.1, Senthilkumar (P.W.14), the Sub Inspector of Police, registered a case in Thogamalai Police station Crime No.382 of 2015 on 13.09.2015 at 8.00 a.m., under Sections 302 and 324 IPC against A~1 to A~3 and prepared the printed First Information Report (Ex.P13), which reached the jurisdictional Magistrate at 9.30 a.m., on the same day as could be seen from the endorsement thereon. The Investigation of the case was taken over by Nepolian (P.W.15), the Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P4) in the presence of witnesses Manickam (not examined) and Kathirvel (P.W.5). He went to the Government Hospital, Trichirappalli, where he conducted inquest on the body of the deceased and prepared the Inquest Report (Ex.P15). He despatched the body for postmortem. Autopsy was conducted by Dr.Kalpana Devi (P.W.9), who issued the Postmortem certificate (Ex.P6). Dr.Kalpana Devi in her evidence as well in the postmortem certificate (Ex.P6) has noted one injury measuring 8x1x0.5 c.m. on the right of the parietal region of the scalp. As to the cause of death, she has stated as follows:~

-The deceased would appear to have died due to Head injuries.-

5.A~1 to A~3 were arrested on 14.09.2015 at about 6.30 a.m. and on the confession given by A~1, a crowbar (M.O.1) was recovered by the Investigating Officer under the cover of mahazar (Ex.P4) in the presence of Manivel (P.W.8) and Ramarathnam (not examined). No recovery was effected pursuant to the confession of A~2 and A~3. After examining witnesses and collecting various reports, the Investigating Officer completed the investigation and filed final report in P.R.C.No.10 of 2016 before the learned Judicial Magistrate No.I, Kulithalai. On the appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.59 of 2016 and made over to the Mahila Court for trial. The Trial Court framed charges against the accused, as detailed in Paragraph No.1, supra. When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 15 witnesses, marked 21 exhibits and 4 material objects. When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they explained their case by stating that the deceased party had attacked them and in self~defence, they retaliated. On behalf of the accused, one witness, Dr.Manimaran, who treated A1 in the Government Hospital, Trichirappalli, was examined and Ex.D6 relating to the treatment given to A~1 was marked. Apart from that, through Dr.William Androse (P.W.13), the defence marked Ex.D1 and Ex.D2 viz., the Accident Register copies for A~1 and A~3. The Trial Court, after considering the evidence on record and hearing either side, by Judgment dated 30.12.2016, acquitted Thamaraiselveli (A~2), but convicted and sentenced A~1 and A~3 as stated above. Challenging the conviction and sentence, A~1 is before this Court. It is reported that A~3 did not challenge the conviction and sentence, but paid the fine imposed by the trial Court.

6.Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent. This Court gave its anxious consideration to the rival submissions.

7.The admitted facts in this case are;

(a)The deceased Murugan is the father of Natarajan~P.W.1 and Vadivel ? P.W.2;

(b)Poovayi (P.W.3); Moorthy (P.W.4); Kathirvel (P.W.5); Amsavalli (P.W.6) and Karuppan (P.W.7), who are the eye witnesses, are closely related to the deceased Murugan. However, Moorthy (P.W.4) turned hostile.
(c)A~3 is the brother of A~2 and A~2 is the wife of A~1.

(d)The accused and the deceased are neighbours and are related.
(e)Natarajan~P.W.1 and his brother Vadivel~P.W.2 are injured witnesses, who have stated that their father was having 3/4 Acre land in Sukkampatti South street, which is adjacent to the land belonging to the accused; the accused applied for electricity service connection; electricity board authorities wanted -No Objection- from their father for drawing the electricity line through his land to reach the land of the accused; since the accused had constructed a wall in the common pathway thereby obstructing free access, their father agreed to give -No Objection- on condition that the

accused removes the obstruction; since the accused did not remove the obstruction, their father gave a representation to the authorities objecting to the drawal of power line through his land; while so, on 12.09.2015 around 8.00 p.m., when their father was standing near their house, A~1 to A~3 came there and A~1 started abusing him in filthy language and found fault with him for giving objection letter to the electricity board; thereafter, A~1 attacked their father on his head with a crowbar; on seeing this, when P.W.1 went to his rescue, A~2 sprinkled chilli power on the eyes of P.W.1; When P.W.2 intervened, A~1 attacked him with the crowbar, A~3 threw a stone at him. This is the parrot~like evidence of P.Ws.1, 2, 3, 6 and 7.

8.This Court would not had any hesitation in accepting the testimony of the injured witnesses if not for the fact that the accused had also sustained serious injuries, which they have established through Dr.Willaim Androse (P.W.13), the Investigation Officer (P.W.15) as well through Dr.Manimaran (D.W.1). Dr.William Androse (P.W.13), in his evidence has stated that on 12.09.2015 at 11.40 p.m., he examined Natarajan (P.W.1); Amsavalli (P.W.6) at 11.45 p.m.; the deceased Murugan at 11.50 p.m.; Vadivel (P.W.2) at 12.35 midnight. However, in the cross examination, he admitted that on 12.09.2015 at 11.55 p.m., he examined Palanisamy (A~1), the appellant herein and noted 7x4x3 c.m. deep lacerated injury on his forehead; contusion on the right scapular region and an Head Injury. Since A1 required further treatment, he referred him to Government Hospital, Trichirappalli. The Accident Register copy relating to A~1 was marked as Ex.D~1. Similarly, in the cross examination, Dr.William Androse admitted that on 12.09.2015, at 11.58 p.m., he examined Subramanian ? A3 and noted four injuries viz.,

1.Laceration Frontal scalp 4x2x1 cm
2.Abrasion with contusion Right axilla 3 x 2 cm
3.Contusion left ankle 3 x2 cm
4.Laceration Right index finger 4 x 2 x 1 cm.

Further treatment was given by Dr.Manimaran ? D.W.1 to A~1 at Government Hospital, Trichirappalli and the medical record was marked as Ex.D6. The Investigating Officer arrested A~1 to A~3 on 14.09.2015 at 6.30 a.m. and when they were produced before the learned Judicial Magistrate No.I, Kulithalai, the learned Magistrate has noted injuries on the body of A~1 and A~3, which have been referred to in the remand application ? Ex.D4. When the Investigating Officer was confronted with this in the cross examination, he admitted that the accused also sustained injuries and on the complaint given by A~2, a case in Crime No.383 of 2015 was registered against the deceased Murugan, Natarajan ? P.W.1 and Vadivel ? P.W.2 for the offences under Sections 294 (b), 323 and 324 IPC. However, no final report was filed in Crime No.383 of 2015 till 21.10.2015. In other words, only when the accused started cross examining the prosecution witnesses on the injury sustained by them in the incident, the police hurriedly completed the investigation in Crime No.383 of 2015 and filed a closure report on 21.10.2015 before the learned Judicial Magistrate No.I, Kulithalai.

9.Had the injury suffered by A~1 been inconsequential, things would have been different. On the contrary, A~1 had suffered serious head injuries and was referred by Dr.William Androse (P.W.13) for advanced treatment to the Government Hospital, Trichirappalli, where he was examined by Dr.Manimaran ? D.W.1. All these facts have been completely suppressed by the prosecution. Hence, applying the principles laid down in the Judgment of the Hon-ble Apex

Court in LAKSHMI SINGH AND OTHERS v. STATE OF BIHAR reported in 1976 SCC (Cri) 671, wherein it has been observed that ?It seems to us that in a murder case, the non~explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:
(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
(2)that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
(3)that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.
The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.?
Hence, this appeal deserves to be allowed and accordingly, the same is allowed. We hold that though A~3 has not challenged the conviction and sentence, we deem it fit to extend the benefit to A~3 also.

10.In the result,
this Criminal Appeal is allowed;
The conviction and sentence, imposed on Palanisamy (A~1) for the offences under Sections 302 and 324 IPC and on Subramanian (A~3) for the offence under Section 324 IPC, by Judgment, dated 30.12.2016 in S.C.No.59 of 2016, are set aside.
Fine amount paid, if any, is directed to be refunded to the appellant.

To
1.The Sessions Judge (Mahila Fast Track Court), Karur.
2.The Inspector of Police,
Thogamalai Police Station,
Karur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.